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Appeal from Chancery Court of Richmond.

Petition for probate of the last will and testament for Virginia Deane Meany, deceased, by Thomas F. Meany and others, contested by Ida Yale Priddy and others. From an order refusing admission to probate, petitioners appeal. Affirmed.

R. H. Talley, of Richmond, for appellants.

Jas. E. Cannon and *S. A. Anderson*, both of Richmond, for appellees.

SOUTHERN RY. Co. *v.* FINLEY & SEYMOUR.

March 18, 1920.

[102 S. E. 559.]

1. Carriers (§ 219 (5)*)—Connecting or Delivering Carrier of Interstate Shipment Liable For Its Own Default.—Under the Carmack Amendment (U. S. Comp. St. §§ 8604a, 8604aa), authorizing the shipper of an interstate shipment to sue the initial carrier for the defaults of connecting carriers, but providing that nothing therein shall deprive any holder of a bill of lading of existing remedies or rights of action, a connecting or delivering carrier is liable for its own defaults resulting in damage to live stock.

[Ed. Note.—For other cases, see 15 Va-W. Va. Enc. Dig 155; 16 Va-W. Va. Enc. Dig. 247.]

2. Appeal and Error (§ 236 (2)*)—Objection on Account of Variance Should Be Made by Motion to Exclude Evidence.—In an action for damages to a shipment of live stock, an objection based on an alleged variance between an allegation that the shipment was delivered to defendant at L., and a bill of lading showing that it was delivered to connecting carrier at that point, should have been raised by motion to exclude the evidence, in view of Code 1919, §§ 6104, 6250, as to amendments.

[Ed. Note.—For other cases, see 13 Va-W. Va. Enc. Dig 482.]

3. Carriers (§ 288 (1)*)—Burden of Showing Cause of Damage to Shipment Unaccompanied by Shipper Is on Connecting Carrier Sued.—When an interstate carrier receives for transportation live stock in good condition unaccompanied by the owner or his agent, and delivers it in damaged or bad condition, the burden of proof as to the cause of the damage is on the carrier.

[Ed. Note.—For other cases, see 2 Va-W. Va. Enc. Dig. 719, 720.]

4. Trial (§ 156 (3)*)—On Demurrer to Evidence, Court Bound to Conclude That Damage Was Due to Defendant's Negligence.—Where, in an action for damages to an interstate shipment of live stock, the

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jury might fairly have inferred from the evidence that the damage was caused by defendant's negligent failure to feed and water the stock during their journey, the court was bound to so conclude on demurrer to the evidence.

[Ed. Note.—For other cases, see 4 Va-W. Va. Enc. Dig. 524.]

Error to Corporation Court of Danville.

Action by Firley & Seymour against the Southern Railway Company. Judgment for plaintiffs, and defendant brings error. Affirmed.

Withers, Brown & Leigh, of Danville, for plaintiff in error.

P. J. Hundley and W. H. Rogers, both of Danville, for defendants in error.

CITY OF RICHMOND *v.* ROSE.

March 18, 1920.

[102 S. E. 561.]

1. Municipal Corporations (§ 763 (1)*)—Required Only to Exercise Care to Keep Sidewalk in Reasonably Safe Condition.—A municipality is not an insurer against accidents on its sidewalks, but is liable only for its failure to use ordinary care under the circumstances to keep the sidewalk in a reasonably safe condition for ordinary travel by persons using due care, and a defect in the walk is not actionable, unless it is such as might reasonably be presumed to be dangerous.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 901.]

2. Municipal Corporations (§ 806 (2)*)—Pedestrian Need Not Look for Defects in Walk.—Ordinary care does not require that pedestrian, using a city sidewalk, shall inspect it for defects, or be on the lookout for defects or obstructions; but he may act on the assumption that the walk is in a reasonably safe condition, unless the danger is so obvious that it would be apparent to an ordinarily prudent person.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 916, 917.]

3. Municipal Corporations (§ 791 (1)*)—Must Inspect Sidewalk for Dangerous Irregularities.—A municipality is charged with the duty of reasonable inspection of its sidewalks, and is held to have knowledge of defects which such an inspection would disclose.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 903, 904, 905.]

4. Municipal Corporations (§ 821 (6)*)—Whether Defect in Sidewalk Is Actionable Is Ordinarily a Jury Question.—Whether a de-

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